MAJLIS PEGUAM & ANOR.

v.

TAN SRI DATO' MOHAMED YUSOFF MOHAMED

SUPREME COURT, KUALA LUMPUR
ANUAR ZAINAL ABIDIN CJ (MALAYA)
MOHD AZMI FCJ
EDGAR JOSEPH JR FCJ
[CIVIL APPEAL NO: 02-401-1992]
21 APRIL 1997

CIVIL PROCEDURE: *Time - Abridgement - Enlargement - Power of Court - Courts of Judicature Act 1964 - Paragraph 8 of Schedule - Section 25(2) - Interpretation - Whether power obligatory or directory*

STATUTORY INTERPRETATION: *Construction of statutes - Enacting part and proviso - Whether proviso can totally negative enacting part - Effect of proviso to s. 25(2) of Courts of Judicature Act 1964 - Whether a condition precedent on enacting part - Whether merely a qualification to enacting part - Whether legislative words may be construed as superfluous*

CIVIL PROCEDURE: *Time - Abridgement - Courts of Judicature Act 1964 - Paragraph 8 of Schedule - Section 25(2) - Effect of proviso on exercise of power to abridge time - "In accordance with any existing written law or rules of Court" - Meaning of - Whether power can be exercised in absence of written law or rules of Court relating to abridgement of time - Whether power can be invoked to defeat a mandatory requirement of any written law as to time*

LEGAL PROFESSION: *Admission - Period for posting of notices - Legal Profession Act 1976, s. 15(5) - Three months - Whether mandatory and obligatory - Whether can be abridged - Comparison with ss. 15(3), 16(1) & s. 17*

LEGAL PROFESSION: *Admission - Period for posting of notices - Legal Profession Act 1976, s. 15(5) - Three months - Whether Court may abridge time by resort to para 8 of Schedule to Courts of Judicature Act 1964*

WORDS & PHRASES: *"... In accordance with any written law or rules of Court relating to the same." - Proviso to s. 25(2) of Courts of Judicature Act 1964*

WORDS & PHRASES: *"Powers" - Courts of Judicature Act 1964 - Section 25 - Paragraph 8 of Schedule - "Jurisdiction" - Courts Ordinance 1948 - Paragraph 12 of Second Schedule*

WORDS & PHRASES: *"... or such shorter period as the Court may allow ..." - Legal Profession Act 1976, ss. 15(3), 16(1) & s. 17*

WORDS & PHRASES: *"Shall" - Legal Profession Act 1976, s. 15(5)*

The respondent had applied for an abridgement of the three-month time period prescribed by s. 15(5) of the Legal Profession Act 1976 ('the LPA') for the posting of notices in respect of a petition for admission and enrolment as an advocate and solicitor. As s. 15(5) of the LPA contains no express provision for the abridgement of time, the respondent grounded his application on the 'additional powers' of the High Court as embodied in para. 8 of the Schedule to the Courts of Judicature Act 1964 ('the CJA'). After hearing arguments, the trial Judge decided that the three-month time period prescribed by s. 15(5) of the LPA is **not** mandatory but merely directory, and that the High Court has the power to abridge the said time period despite the fact that s. 15(5) of the LPA is silent on either the power of the Court to abridge time or on any prohibition against the abridgement of time. The trial Judge held that the Court has a general power to abridge or enlarge time under its ombudsman judicial powers as conferred by s. 25(2) of the CJA read together with para. 8 of the Schedule to the CJA. In so holding, the trial Judge drew an acute distinction between the word "jurisdiction" as used in para. 12 of the Second Schedule to the repealed Courts Ordinance 1948 ('the CO') and the word "powers" as employed in s. 25 of the CJA as well as in para. 8 of the Schedule to the CJA, and, concluded that the word "powers" denotes a self-conferring general power which may be exercised independently of any other power-conferring statute. In the result, the trial Judge abridged the three-month time period prescribed by s. 15(5) of the LPA to one week. Dissatisfied, the appellants appealed, contending that the power conferred by para. 8 of the Schedule to the CJA read together with s. 25(2) of the CJA is merely a declaratory or an enabling power which may **not** be exercised independently in the absence of a separate power-conferring statute on the particular subject matter. Thus, the appellants submitted that the Court has **no** power to entain an application under para. 8 of the Schedule to the CJA to abridge the three-month time period prescribed by s. 15(5) of the LPA.

Held:
Per Mohd Azmi FCJ

[1] The literal and liberal interpretation given to para 8 of the Schedule to the CJA read together with s. 25(2) of the CJA has been adopted and followed in *Damodaran v. Vesudevan, Zainal Abidin Abdul Rahman v. Century Hotel Sdn. Bhd., Aspatra Sdn. Bhd. & Ors. v. Bank Bumiputra Malaysia Bhd. & Anor.*, and *R. Rama Chandran v. The Industrial Court of Malaysia & Anor*. From these authorities it is clear that the better

view is **not** to interpret s. 25(2) of the CJA in a narrow and pedantic way. Once powers are conferred upon the Courts by the Legislature, Judges should not shy away from exercising these powers.

[1a] In the absence of any ambiguity in the enacting part of a statute, the proviso to it should **not** be interpreted in such a way as to totally negative the enacting part. Thus, as the enacting part of s. 25(2) of the CJA is very clear, the proviso to it must be interpreted only as an exception or qualification to the enacting part and **not** as imposing a condition precedent on the enacting part. Therefore, the additional powers conferred by para. 8 of the Schedule to the CJA should **not** be interpreted as being restricted by a condition precedent merely because the said powers are expressed to be exercised "in accordance with any written law or rules of Court relating thereto." The unambiguous conferment of powers by the enacting part of s. 25(2) of the CJA is clearly a different matter from the mode by which such powers are to be exercised as expressed in the proviso to it.

[1b] The proviso to s. 25(2) of the CJA does **not** state that the powers embodied in the enacting part of s. 25(2) of the CJA are to be exercised "subject to" any written law – which would mean that the powers are merely declaratory. Instead, the phrase employed is "in accordance with" – which refers to the mode of exercising the powers. Furthermore, the word "any" immediately preceding the phrase "written law or rules of Court" fortifies the argument that it is merely the mode of exercising the powers that has to be in accordance with any existing written law or rules of Court and not with those to be enacted in the future.

[1c] If the intention of the Legislature was to prohibit the exercise of the powers in the absence of another statute, such an intention would have been expressed in the enacting part by a direct qualification and **not** by way of a proviso.

[1d] The only qualification or exception imposed by the proviso on the mode of exercising the power to abridge time under para. 8 of the Schedule to the CJA is that it must be in accordance with and **not** contrary to any existing written law or rules of Court. In appropriate cases, it does **not** mean that the said power cannot be exercised at all in the absence of written law or rules of Court relating to the abridgement of time.

[1e] It is obvious that – by the deliberate substitution of the word "jurisdiction" in para. 12 of the Second Schedule to the CO with the word "powers" in s. 25 of the CJA as well as in para. 8 of the Schedule to the CJA – Parliament intended that the High Court should be conferred

with outright additional general powers that may be exercised judicially in accordance with any written law or rules of Court relating thereto.

[1f] It goes without saying that the general provision under para. 8 of the Schedule to the CJA cannot be invoked to defeat or supersede a mandatory requirement of any written law as to time.

[2] Generally, statutory provisions in respect of time are always mandatory and obligatory unless an express power to enlarge or abridge time is given to the Court therein.

[2a] On a strict rule of interpretation, it is very clear and plain, particularly when s. 15(5) of the LPA is compared to ss. 15(3) and 16(1), that the Legislature has deliberately left out the words "or such shorter period as the Court may allow" from s. 15(5). This omission of the power to abridge time from s. 15(5) of the LPA obviously indicates that the Legislature intended the three-month time period prescribed therein to be a mandatory requirement. Even if a purposive approach of interpretation is applied, s. 17 of the LPA compels the conclusion that the three-month time period prescribed by s. 15(5) is mandatory.

[2b] The provisions of ss. 15(3) and 16(1) of the LPA, unlike those of s. 15(5), do not affect the right of third parties. Any abridgement of the three-month time period prescribed by s. 15(5) of the LPA will affect the right of third parties, *viz*, members of the general public, in exercising their right to enter caveats against a petitioner's admission as an advocate and solicitor to the Malaysian Bar.

[3] In interpreting statutory provisions, **no** word of the Legislature should be construed as superfluous and of no effect simply to enable the Court to rewrite legislative language. The doctrine of absurdity and redundancy in respect of legislative words must be applied with extreme caution and must **not** be applied when an explanation can be found for the words used.

[4] Consequently, the trial Judge had erred in law in holding that the High Court has the power to abridge the three-month time period prescribed by s. 15(5) of the LPA by virtue of the powers conferred by para. 8 of the Schedule to the CJA.

Held:
Per Edgar Joseph Jr FCJ

[1] Subject to the context in which the words appear, the use of the word "shall" in s. 15(5) of the LPA is taken *prima facie* to import some sort of obligation in contrariety to the word "may". Under the LPA, **no** power is given to the Court to abridge the period of posting in s. 15(5), and this is emphasised by the contrast s. 15(5) displays when compared with ss. 15(3) and 16(1) wherein time is mentioned and the words "or such shorter period as the Court may allow" occur. Hence, the presumption that a deliberate change in wording denotes a change in meaning may properly be invoked in such a situation.

[2] A notice posted pursuant to s. 15(5) of the LPA does not specify the date of the hearing of the petition and, thus, a member of the public wishing to oppose the petition may be disadvantaged if the period of posting in s. 15(5) is capable of abridgement. Hence, it is impossible to escape the conclusion that the three-month time period prescribed by s. 15(5) of the LPA is mandatory and, therefore, obligatory.

[3] Paragraph 8 of the Schedule to the CJA is a general measure which articulates the powers of the High Court to enlarge or abridge the time prescribed by any written law whereas s. 15(5) of the LPA is a specific measure with **no** power given to the Court to enlarge or abridge time. In this connection, it is a well known rule of construction that the specific measure overrides the general measure.

[4] The three-month time period prescribed by s. 15(5) of the LPA is obligatory and the High Court is prohibited from abridging the said time period by resorting to its general powers under para. 8 of the Schedule of the CJA or otherwise. Any attempt to abridge the three-month time period prescribed by s. 15(5) of the LPA, by resort to para. 8 of the Schedule to the CJA, would be in direct contradiction of the provisions of the proviso to s. 25(2) of the CJA and, therefore, **not** in accordance with written law.

[5] Generally, where a statute regulates the exercise of a right or power or the use of a prescribed procedure, with an express reference to time, the Court is markedly inclined to regard the provision as to time as obligatory unless a power to enlarge or abridge time is given to the Court thereunder. However, in rare cases, a provision as to time in a statute may be directory only even though no power to enlarge or abridge time is given to the Court. Exceptionally, therefore, where a provision as to time in a particular statute is merely directory but no power to enlarge

or abridge time is given to the Court thereunder, the Court may still exercise its general powers under para. 8 of the Schedule of the CJA in appropriate circumstances.

[6] The words " ... the High Court shall have the additional powers set out in the Schedule" appearing in s. 25(2) of the CJA are **not** merely declaratory of the powers of the High Court but are power-conferring words.

[Appeal allowed; order of High Court set aside.]

*[**Bahasa Malaysia** Translation of Headnotes]*

PROSEDUR SIVIL: *Masa - Pemendekan - Perluasan - Kuasa Mahkamah - Akta Mahkamah Kehakiman 1964 - Perenggan 8 Jadual - Seksyen 25(2) - Pentafsiran - Samada kuasa suatu kewajipan atau arahan*

PENTAFSIRAN STATUT: *Pentafsiran statut - Menggubal bahagian dan proviso - Samada proviso boleh menafikan keseluruhan bahagian yang menggubal - Kesan proviso kepada s. 25(2) Akta Mahkamah Kehakiman 1964 - Samada satu syarat duluan kepada bahagian yang menggubal - Samada hanya merupakan kelayakan untukbahagian yang menggubal - Samada perkataan-perkataan perundangan boleh ditafsirkan sebagai tidak perlu*

PROSEDUR SIVIL: *Masa - Pengurangan - Akta Mahkamah Kehakiman 1964 - Perenggan 8 Jadual - Seksyen 25(2) - Kesan peruntukan ke atas perlaksanaan kuasa untuk mengurangkan masa - "Menurut mana-mana undang-undang bertulis yang sedia ada atau kaedah-kaedah Mahkamah" - Maksud - Samada kuasa boleh dilaksanakan dalam ketiadaan undang-undang bertulis atau kaedah Mahkamah berkaitan dengan pengurangan masa - Samada kuasa boleh digunakan untuk mematahkan syarat mandatori mana-mana undang-undang bertulis berhubung dengan masa*

PROFESYEN UNDANG-UNDANG: *Kemasukan - Tempoh bagi penampalan notis - Akta Profesyen Undang-Undang 1976 s. 15(5) - Tiga bulan - Samada wajib dan mandatori - Samada boleh dikurangkan - Perbandingan dengan ss. 15(3), 16(1) & s. 17*

PROFESYEN UNDANG-UNDANG: *Kemasukan - Tempoh bagi penampalan notis - Akta Profesyen Undang-Undang 1976 s. 15(5) - Tiga bulan - Samada Mahkamah boleh mengurangkan masa dengan memakai perenggan 8 Jadual kepada Akta Mahkamah Kehakiman 1964*

PERKATAAN DAN ISTILAH: *"... Menurut mana-mana undang-undang bertulis atau kaedah-kaedah Mahkamah berhubung dengan perkara yang sama " - Peruntukan kepada s. 25(2) Akta Mahkamah Kehakiman 1964*

PERKATAAN DAN ISTILAH: *"Kuasa" - Akta Mahkamah Kehakiman 1964 - Seksyen 25 - Perenggan 8 Jadual - "Bidangkuasa" - Ordinan Mahkamah 1948 - Perenggan 12 Jadual Kedua*

PERKATAAN & ISTILAH: *"... Atau tempoh sedemikian yang lebih singkat sepertimana yang mungkin dibenarkan oleh Mahkamah ..." Akta Profesyen Undang-Undang 1976 ss. 15(3), 16(1) & s. 17*

PERKATAAN DAN ISTILAH: *"Shall" - Akta Profesyen Undang-undang 1976 s. 15(5)*

Responden telah memohon untuk mendapatkan satu pengurangan bagi tempoh tiga bulan yang ditetapkan oleh s. 15(5) Akta Profesyen Undang-undang 1976 ('LPA') bagi menampalkan notis-notis berhubung dengan petisyen untuk kemasukan dan pendaftaran sebagai seorang peguambela dan peguamcara. Oleh kerana s. 15(5) LPA tersebut tidak mengandungi peruntukan nyata untuk pengurangan masa, responden telah mengasaskan permohonannya pada "kuasa-kuasa tambahan" Mahkamah Tinggi sepertimana yang telah disemadikan dalam perenggan 8 Jadual kepada Akta Mahkamah Kehakiman 1964 ('CJA'). Selepas mendengar hujahan-hujahan, Hakim perbicaraan telah memutuskan bahawa tempoh masa tiga bulan yang ditetapkan oleh s. 15(5) LPA adalah **tidak** mandatori tetapi hanya bersifat arahan, dan bahawa Mahkamah Tinggi mempunyai kuasa untuk mengurangkan tempoh masa tersebut walaupun terdapatnya hakikat bahawa s. 15(5) LPA tidak menyebut apa-apa mengenai kuasa Mahkamah untuk mengurangkan masa atau mengenai mana-mana larangan terhadap pengurangan masa. Hakim perbicaraan memutuskan bahawa Mahkamah mempunyai kuasa umum untuk mengurangkan atau memanjangkan masa di bawah kuasa-kuasa kehakiman ombudsman sepertimana yang diberikan oleh s. 25(2) CJA dibaca bersama-sama dengan perenggan 8 Jadual kepada CJA tersebut. Dalam memutuskan sedemikian, Hakim perbicaraan telah menggariskan perbezaan halus antara perkataan "bidangkuasa" sepertimana yang digunakan dalam perenggan 12 Jadual Kedua untuk memansuhkan Ordinan Mahkamah 1948 ('CO') dan perkataan "kuasa-kuasa" sepertimana yang digunakan dalam s. 25 CJA dan juga dalam perenggan 8 Jadual kepada CJA, dan, merumuskan bahawa perkataan "kuasa-kuasa" menandakan pemberian kuasa umum secara bersendiri yang boleh dilaksanakan secara bebasnya daripada mana-mana statut yang memberikan kuasa. Akibatnya, Hakim perbicaraan telah mengurangkan tempoh masa selama tiga bulan yang ditetapkan oleh s. 15(5) LPA kepada satu minggu. Berasa tidak puashati, perayu-perayu telah merayu, dengan menegaskan bahawa kuasa-kuasa yang diberikan oleh perenggan 8 Jadual kepada CJA yang dibaca bersama dengan s. 25(2)CLA adalah semata-mata satu pengisytiharan atau suatu kuasa memboleh, yang **tidak harus** dilaksanakan secara bebas dalam ketiadaan statut

yang memberi kuasa yang berasingan atas perkara yang khusus ini. Dengan itu, perayu-perayu telah berhujah bahawa Mahkamah **tidak mempunyai** kuasa untuk melayan satu permohonan di bawah perenggan 8 Jadual kepada CJA untuk mengurangkan tempoh masa selama tiga bulan yang ditetapkan oleh s. 15(5) LPA tersebut.

Diputuskan
Oleh Mohd Azmi HMP

[1] Tafsiran liberal dan harfiah yang diberikan kepada perenggan 8 Jadual CJA yang dibaca bersama-sama dengan s. 25(2) CJA telah diterima-pakai dan dituruti dalam *Damodaran v. Vesudevan, Zainal Abidin Abdul Rahman v. Century Hotel Sdn Bhd., Aspatra Sdn. Bhd. & Ors. v. Bank Bumiputra Malaysia Bhd. & Anor.,* dan *R. Rama Chandran v. The Industrial Court of Malaysia & Anor.* Daripada autoriti-autoriti ini ianya jelas bahawa pandangan yang sebaiknya adalah untuk **tidak** mentafsirkan s. 252) CJA tersebut dalam cara yang terlalu teliti. Sebaik sahaja kuasa-kuasa dianugerahkan ke atas Mahkamah oleh Perundangan, Hakim-hakim tidak seharusnya enggan untuk melaksanakan kuasa-kuasa ini.

[1a] Dalam ketiadaan sebarang kekaburan pada bahagian menggubal sesuatu statut, proviso kepadanya **tidak** seharusnya ditafsirkan dalam cara yang menafikan keseluruhan bahagian menggubal itu. Dengan itu, oleh kerana bahagian menggubal s. 25(2) CJA adalah amat jelas, proviso kepadanya mestilah ditafsirkan hanya sebagai suatu pengecualian atau syarat kepada bahagian menggubal dan **bukan** sebagai mengenakan satu syarat duluan ke atas bahagian menggubal itu. Dengan itu, kuasa-kuasa tambahan yang dianugerahkan oleh perenggan 8 Jadual kepada CJA tersebut **tidak** seharusnya ditafsirkan sebagai dihadkan oleh syarat duluan semata-mata kerana kuasa-kuasa tersebut dinyatakan sebagai harus dilaksanakan "menurut mana-mana undang-undang bertulis atau kaedah-kaedah Mahkamah yang berkaitan dengannya". Pengurniaan kuasa yang jelas oleh bahagian menggubal s. 25(2) CJA tersebut adalah secara jelasnya satu perkara yang berbeza daripada cara melalui yang mana kuasa-kuasa yang sedemikian harus dilaksanakan sepertimana yang dinyatakan dalam proviso kepadanya.

[1b] Peruntukan kepada s. 25(2) CJA **tidak** menyatakan bahawa kuasa-kuasa yang telah disemadikan dalam bahagian menggubal s. 25(2) CJA tersebut adalah harus dilaksanakan "tertakluk kepada" mana-mana undang-undang bertulis – yang mana akan bermakna bahawa kuasa-kuasa tersebut adalah semata-mata pengisytiharan. Sebaliknya ungkapan yang digunakan adalah "selaras dengan" – yang mana merujuk kepada cara melaksanakan

kuasa-kuasa tersebut. Lagipun, perkataan "mana-mana" yang mendahului ungkapan "undang-undang bertulis atau kaedah-kaedah Mahkamah" memperkukuhkan hujahan bahawa ianya adalah hanya cara melaksanakan kuasa-kuasa yang sepatutnya selaras dengan mana-mana undang-undang bertulis sedia ada atau kaedah-kaedah Mahkamah dan bukannya dengan yang akan digubalkan di masa hadapan.

[1b] Jika niat perundangan itu adalah untuk melarang pelaksanaan kuasa-kuasa dalam ketiadaan suatu statut yang lain, niat yang sedemikian tentunya telah dinyatakan dalam bahagian menggubal itu melalui syarat secara langsung dan bukannya melalui satu proviso.

[1d] Satu-satunya syarat atau pengecualian yang dikenakan oleh peruntukan mengenai cara melaksanakan kuasa untuk mengurangkan masa di bawah perenggan 8 Jadual kepada CJA adalah bahawa ianya mestilah selaras dengan dan **bukannya** bertentangan dengan mana-mana undang-undang bertulis yang sedia ada atau kaedah-kaedah Mahkamah. Dalam kes-kes yang wajar, ianya tidak bermakna bahawa kuasa tersebut tidak boleh dilaksanakan sama sekali dalam ketiadaan undang-undang bertulis atau kaedah-kaedah Mahkamah berhubung dengan pengurangan masa.

[1e] Ianya adalah jelas bahawa – dengan sengaja menggantikan perkataan "bidangkuasa" dalam perenggan 12 Jadual Kedua kepada CO dengan perkataan "kuasa-kuasa" dalam s. 25 CJA dan juga dalam perenggan 8 Jadual kepada CJA tersebut – Parlimen berniat bahawa Mahkamah Tinggi seharusnya dianugerahkan dengan kuasa-kuasa umum yang sesungguhnya boleh dilaksanakan di sisi kehakiman selaras dengan mana-mana kaedah Mahkamah berhubung dengannya.

[1f] Ianya mesti mengikut bahawa peruntukan umum di bawah perenggan 8 Jadual kepada CJA tidak boleh digunakan untuk mematahkan atau mendahului syarat mandatori mana-mana undang-undang bertulis berhubung dengan masa.

[2] Secara amnya, peruntukan-peruntukan berkanun berhubung dengan masa adalah selalunya mandatori dan wajib kecuali satu kuasa nyata untuk melanjutkan atau mengurangkan masa diberikan kepada Mahkamah di situ.

[2a] Berdasarkan kaedah pentafsiran yang tegas, ianya jelas dan nyata, khususnya apabila s. 15(5) LPA dibandingkan dengan ss. 15(3) dan 16(1), bahawa Perundangan tersebut telah dengan sengaja meninggalkan perkataan-perkataan "or such shorter period as the Court may allow" daripada s. 15(5). Peninggalan kuasa untuk mengurangkan masa daripada s. 15(5) LPA dengan jelasnya menunjukkan bahawa Perundangan tersebut

berniat supaya tempoh masa selama tiga bulan yang ditetapkan di dalamnya sebagai satu syarat mandatori. Walaupun pendekatan tujuan di pakai dalam pentafsirannya, s. 17 LPA memaksa kesimpulan bahawa masa selama tiga bulan yang ditetapkan oleh s. 15(5) adalah mandatori.

[2b] Peruntukan-peruntukan ss. 15(3) dan 16(1) LPA, tidak seperti s. 15(5), tidak menjejaskan hak pihak ketiga. Sebarang pengurangan tempoh masa tiga bulan itu yang ditetapkan oleh s. 15(5) LPA akan menjejaskan hak pihak-pihak ketiga, iaitu, orang-orang awam dalam melaksanakan hak mereka untuk memasukkan kaveat-kaveat terhadap kemasukan pempetisyen sebagai seorang peguambela dan peguamcara kepada Badan Peguam Malaysia.

[3] Dalam mentafsirkan peruntukan-peruntukan berkanun, **tidak satu pun** perkataan Perundangan harus ditafsirkan sebagai membazir dan tidak berkesan semata-mata bagi membolehkan Mahkamah untuk menulis semula bahasa perundangan. Doktrin kemustahilan dan kelebihan berhubung dengan perkataan-perkataan perundangan mestilah dipakai dengan amat berhemat dan **tidak** seharusnya dipakai apabila terdapatnya satu penjelasan bagi perkataan yang digunakan.

[4] Akibatnya, Hakim perbicaraan telah tersalah pertimbangan di sisi undang-undang dalam memutuskan bahawa Mahkamah Tinggi mempunyai kuasa untuk mengurangkan tempoh masa selama tiga bulan yang ditetapkan oleh s. 15(5) LPA menurut kuasa-kuasa yang diberikan oleh perenggan 8 Jadual kepada CJA.

Diputuskan
Oleh Edgar Joseph Jr HMP

[1] Tertakluk kepada konteks dalam mana terdapatnya perkataan itu, penggunaan perkataan "shall" dalam s. 15(5) LPA adalah secara *prima facie* dianggap sebagai membangkitkan satu kewajipan yang berbeza dengan perkataan "may". Di bawah LPA, **tiada** kuasa yang diberikan kepada Mahkamah untuk mengurangkan tempoh penampalan dalam s. 15(5), dan ini ditekankan oleh perbandingan yang ditunjukkan oleh s. 15(5) apabila diperbandingkan dengan ss. 15(3) dan 16(1) dalam mana masa disebut dan perkataan "or such shorter period as the Court may allow" berlaku. Dengan itu, tanggapan bahawa suatu penukaran yang disengajakan dalam perkataan menunjukkan suatu penukaran dalam maksudnya boleh dengan wajarnya digunakan dalam situasi yang sedemikian.

[2] Sesuatu notis yang ditampal selaras dengan s. 15(5) LPA tidak menentukan tarikh perbicaraan petisyen itu dan, dengan itu, orang awam yang ingin membantah petisyen itu mungkin berada dalam keadaan yang merugikan jika tempoh penampalan dalam s. 15(5) boleh dikurangkan. Dengan itu, adalah mustahil untuk lari daripada keputusan bahawa tempoh masa selama tiga bulan yang ditetapkan oleh s. 15(5) LPA adalah mandatori dan, dengan itu merupakan sesuatu yang wajib.

[3] Perenggan 8 Jadual kepada CJA adalah satu langkah am yang menyatakan dengan jelasnya kuasa-kuasa Mahkamah Tinggi untuk melanjutkan atau mengurangkan masa yang ditetapkan menurut mana-mana undang-undang bertulis sedangkan s. 15(5) LPA adalah suatu langkah yang khusus yang **tidak** memberi kuasa kepada Mahkamah untuk melanjutkan atau mengurangkan masa. Sehubungan dengan perkara ini, ianya adalah suatu kaedah pentafsiran yang terkenal bahawa langkah-langkah khusus mengatasi langkah-langkah umum.

[4] Tempoh masa tiga bulan yang ditetapkan oleh s. 15(5) LPA adalah wajib dan Mahkamah Tinggi dilarang daripada mengurangkan tempoh masa tersebut dengan memakai kuasa-kuasa umumnya di bawah perenggan 8 Jadual CJA atau sebaliknya. Sebarang percubaan untuk mengurangkan tempoh masa selama tiga bulan yang ditetapkan oleh s. 15(5) LPA tersebut, dengan memakai perenggan 8 Jadual kepada CJA, akan merupakan satu penyangkalan secara langsung peruntukan-peruntukan bagi peruntukan s. 25(2) CJA tersebut dan, dengan itu **tidak** menurut undang-undang bertulis.

[5] Secara amnya, di mana sesuatu statut mengawal perlaksanaan hak atau kuasa atau penggunaan prosedur yang ditetapkan, dengan rujukan nyata kepada masa, Mahkamah jelas cenderong untuk menganggapkan peruntukan berhubung dengan masa sebagai wajib kecuali kuasa untuk melanjutkan atau mengurangkan masa di berikan kepada Mahkamah di bawahnya. Walaubagaimanapun, dalam kes-kes yang luar biasa, sesuatu peruntukan berhubung dengan masa dalam sesuatu statut mungkin hanya bersifat arahan walaupun tiada kuasa melanjut atau mengurangkan masa telah diberikan kepada Mahkamah. Dengan itu secara luar biasa, di mana sesuatu peruntukan berhubung dengan masa dalam sesuatu statut yang khusus hanya bersifat arahan tetapi tidak mempunyai kuasa untuk melanjutkan atau mengurangkan masa telah diberikan kepada Mahkamah di bawahnya, Mahkamah tersebut masih boleh melaksanakan kuasa-kuasa amnya di bawah perenggan 8 Jadual CJA dalam keadaan-keadaan yang wajar.

[6] Perkataan "... the High Court shall have the additional powers set out in the Schedule" yang terdapat dalam s. 25(2) CJA **bukannya** semata-mata bersifat mengistihar kuasa-kuasa Mahkamah Tinggi tetapi adalah merupakan perkataan-perkataan yang memberikan kuasa.

[Rayuan dibenarkan; perintah Mahkamah diketepikan.]

Cases referred to:

Lee Lee Cheng v. Seow Peng Kwang [1960] 26 MLJ 1 ***(foll)***
Pahang South Union Omnibus Co. Bhd. v. Minister of Labour & Manpower & Anor. [1981] 2 MLJ 199 ***(ovrd)***
Damodaran v. Vesudevan [1975] 2 MLJ 231 ***(foll)***
T. Damodaran v. Choe Kuan Him [1979] 2 MLJ 267 ***(refd)***
Zainal Abidin bin Haji Abdul Rahman v. Century Hotel Sdn. Bhd. [1982] 1 MLJ 260 ***(cit)***
Aspatra Sdn. Bhd. & 21 Ors. v. Bank Bumiputra Malaysia Bhd. & Anor. [1988] 1 MLJ 97 ***(cit)***
R. Rama Chandran v. Industrial Court of Malaysia & Anor. [1997] 1 CLJ 147 ***(cit)***
Jennings & Anor. v. Kelly [1940] AC 206 ***(foll)***
H. Young & Co. v. The Mayor and Corporation of Royal Leamington SPA [1883] 8 App. Cases 517 ***(refd)***
Majlis Peguam Malaysia v. Au Kong Weng Joseph [1993] 2 MLJ 57 ***(refd)***
Barker v. Palmer [1881] 18 QBD 9 ***(foll)***
Re Chng Kiat Leng [1963] 29 MLJ 25 ***(cit)***
Hanlon v. The Law Society [1981] AC 124 ***(cit)***
Dato' Mohd. Hashim Shamsuddin v. The Attorney-General Hong Kong [1986] 2 MLJ 112 FC ***(cit)***
Howard v. Bodington [1877] 2 PD 203 ***(refd)***
Ricket v. Metropolitan Railway [1867] LR 2 HL 175 ***(cit)***
R v. Committee of Lloyd's, ex parte Moran (1983) The Times, 24 June ***(refd)***
ICI Ltd. v. Shatwell [1965] AC 656 ***(refd)***
Lee Lian & Ors. v. PP [1956] 22 MLJ 191 ***(foll)***
R v. Leicester JJ [1827] 7 B. & C. 6 ***(refd)***
Maqbul Ahmad v. Onkar Prata Narain Singh AIR [1935] PC 85 ***(refd)***
Nathan s/o Arumugam v. Chin Jin Tze [1982] 2 CLJ 555 ***(cit)***

Legislation referred to:

Civil Law Ordinance 1956, s. 8(3)(b)
Courts of Judicature Act 1964, ss. 4, 25(2), para. 8 of Schedule
Courts Ordinance 1948, s. 47, para. 12 of Second Schedule
Legal Profession Act 1976, ss. 15(3), (5), 16(1), 17, 98, 99

Other source referred to:

Statutory Interpretation, Francis Bennion, 2nd Edn., p. 32

For the appellant - Robert Lazar; M/s. Shearn Delamore & Co.
For the respondent - K.S. Narayanan (Saranjit Singh with him); M/s. K.S. Narayanan Assoc.

JUDGMENT

Mohd Azmi FCJ:

The respondent in this appeal has applied by summons in chambers for abridgement of the time required under s. 15(5) of the Legal Profession Act 1976 for posting notices of his petition for admission as an advocate and solicitor. As s. 15(5) does not contain any express provision for abridgement, the respondent grounded his application on the additional power of the High Court as contained in para. 8 of the Schedule to the Courts of Judicature Act 1964 (hereinafter referred to as 'the 1964 Act'). After hearing arguments, the learned trial Judge in the Court below concluded that the period of posting under consideration is not mandatory but merely directory, and that the High Court has the necessary power to allow the application even though s. 15(5) is silent, both on the power of the Court to abridge or on any prohibition against abridgement. His Lordship went further to say that the words, "or such shorter period as the Court may allow" found in the related ss. 15(3) and 16(1) of the Act were superfluous, for even without these words, time could still be abridged by the Court under the ombudsman judicial power conferred by s. 25(2) read with para. 8 of the Schedule to the 1964 Act. In the exercise of his discretion the learned Judge ordered the three months period of posting to be abridged to one week. The Attorney-General and the Bar Council together with the Bar Committee of Kuala Lumpur are dissatisfied with the said order, but only the Bar Council and Bar Committee have decided to proceed with the appeal.

At the outset of the appeal Mr. Robert Lazar for the Bar Council and Committee makes it abundantly clear that the appellants are purely concerned with the law, and that they are not interested in the merits of the application. By this concession, the Malaysian Bar and the Bar Committee of Kuala Lumpur must be taken to have abandoned their only other ground of appeal, leaving only one ground for argument and determination, namely whether, "the learned trial Judge erred in law in holding that the Court has power to extend or abridge the time period of three (3) months prescribed by s. 15(5) of the Legal Profession Act by virtue of the powers conferred particularly by para. 8 of the Schedule to s. 25(2) of the Courts of Judicature Act 1964".

In concluding that the High Court had power and not merely jurisdiction to grant the order of abridgement, the learned trial Judge in his grounds of judgment referred to the provisions of the Second Schedule to the Courts Ordinance 1948, the forerunner of the Schedule to the 1964 Act. He argued that para. 8 of the 1964 Schedule was taken from para. 12 of the 1948 Second Schedule, but there was one important distinction, namely the word "jurisdiction" in the 1948 Second Schedule had been substituted throughout

with the word "power" not only in the Schedule but also in s. 25 of the 1964 Act. In addition, a new proviso was added to para. 8.

Section 25(2) provides:

> Without prejudice to the generality of sub-s. (1) the High Court shall have the additional powers set out in the Schedule:
>
> Provided that all such powers shall be exercised in accordance with any written law or rules of Court relating to the same.

Paragraph 8 states:

> **Time.**
>
> Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed:
>
> Provided that this provision shall be without prejudice to any written law relating to limitation.

By comparison, the relevant provisions under the repealed Courts Ordinance 1948 provided:

Section 47:

> The original civil jurisdiction of the High Court shall be as set out in the Second Schedule hereto.

Paragraph 12 Second Schedule:

> Jurisdiction to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed.

The learned Judge relied on the 1959 judgment of Thomson CJ (as he then was) in the Court of Appeal case of *Lee Lee Cheng v. Seow Peng Kwang* [1960] 26 MLJ 1 to draw the subtle distinction between the words "jurisdiction" used in the Second Schedule to the 1948 Ordinance and "power" in the Schedule to the 1964 Act, and in concluding that the provision of s. 25 together with para. 8 is a power-conferring provision, His Lordship concluded:

> In my view the High Court has under item 8 of the Schedule to the Courts of Judicature Act 1964, the general power to enlarge or abridge any time prescribed by any written law for doing any act or taking any proceeding. Power need not be expressly given in any particular written law.

In short, the learned Judge held that based on the difference between "jurisdiction" and "power" as enunciated by Thomson CJ in *Lee Lee Cheng*, the word "power" in para. 8 is a self-conferring general power, without any further need to look for another power-conferring statute relating to the particular subject-matter, before the said power could be exercised.

Mr. Robert Lazar criticises the adoption of *Lee Cheng* for the purpose of construing the word "power" in the 1964 Act. It is his submission that the power conferred by para. 8 is merely declaratory, i.e. an enabling power, and no change in interpretation is warranted merely because Parliament has substituted the word "jurisdiction" in the 1948 Ordinance with "power" in the 1964 Act. It is further contended that it is the proviso to s. 25(2) which has rendered the power declaratory by imposing a condition for the exercise of the said power which requires the existence of a separate power-conferring written law or rules of Court relating to abridgement and/or extension of time. As there is none, except for s. 15(5) itself, the Court has no power to entertain the application under para. 8 to abridge the time prescribed by s. 15(5) of the Legal Profession Act. If Counsel's restrictive interpretation of the proviso to s. 25(2) is correct, then clearly it may be argued that the power in para. 8 read with s. 25(2) cannot be exercised independently in the absence of a separate power-conferring statute. In support of his argument, Counsel relies on the judgment of the Federal Court in *Pahang South Union Omnibus Co. Bhd. v. Minister of Labour & Manpower & Anor.* [1981] 2 MLJ 199 which has given the proviso a crippling effect on the main provision of s. 25(2) allegedly on the basis of harmonious construction of the statutory provision. At p. 204, Abdoolcader J (as he then was) speaking in the Federal Court had this to say after dismissing an argument by the appellant on the applicability of s. 4 of the 1964 Act for the purpose of invoking the additional power of the High Court:

> There is, however, in any event no conflict or inconsistency between the provisions of s. 25(2) and para. 1 of the Schedule to the Courts of Judicature Act and s. 9(5). The proviso to s. 25 of the Courts of Judicature Act specifically enacts that all such powers of the High Court in the exercise of its jurisdiction as are referred to therein shall be exercised in accordance with any written law or rules of Court relating to the same. The proviso limits or qualifies what precedes it and the whole section inclusive of the proviso is to be read in such a manner that they mutually throw light on each other and result in a harmonious construction. The powers conferred on the High Court in the Schedule to the Courts of Judicature Act are only enabling powers empowering the exercise of jurisdiction in respect of the matters specified therein but only in accordance with any written law or rules of Court relating thereto. They are merely declaratory of the jurisdiction of the High Court and are subject to restrictions or conditions imposed by legislative provisions

pertaining to their exercise and in relation to privative clauses subject to established judicial interpretation that the ouster of jurisdiction can only affect errors of law within the jurisdiction and not without nor if the decision sought to be impugned is a nullity. Section 25(2) of the Courts of Judicature Act does not confer any powers as such but only indicates that there is power to make such orders specified in the Schedule thereto as may be necessary when power so to do is either provided for or is not excluded by some statutory provision and then only within the ambit of its content.

Section 4 of the 1964 Act provides:

In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

Having come to the conclusion that there was no conflict or inconsistency to bring about the operation of s. 4, that should have been sufficient to dispose of that appeal. In our view, the statement of the Federal Court imposing a very restrictive interpretation of s. 25 and the Schedule thereto is an *obiter dicta* which this Court need not feel bound to follow. Indeed, in making the statement, the Federal Court, did not have the opportunity to consider leading authorities on the particular point, particularly the cases of *Lee Lee Cheng* and *Damodaran v. Vesudevan* [1975] 2 MLJ 231.

In *Lee Lee Cheng* the Court of Appeal in dismissing an appeal against the refusal of the High Court to extend time prescribed by s. 8(3)(b) of the Civil Law Ordinance 1956 to bring proceedings against the estate of a deceased person held that the prescribed time of "not later than six months after his personal representative took out representation" was a period of limitation and that para. 12 of Part A of the Second Schedule of the Courts Ordinance 1948 (which is the forerunner of para. 8 of the Schedule to the 1964 Act) was merely declaratory of the jurisdiction of the High Court to enlarge the time prescribed by any written law for doing any act or taking any proceeding, except where there was express power in the particular written law itself which enabled such time to be so enlarged. The main rationale for the judgment is not based on the interpretation of s. 47 (which is the predecessor of s. 25 of the 1964 Act) but it was because of the word "jurisdiction" used throughout by the legislature both in s. 47 and the Second Schedule to the 1948 Ordinance. In holding that the High Court had no power to extend a prescribed time under para. 12 of the Second Schedule, Thompson CJ emphasised the distinction between the word "jurisdiction" used in the Second Schedule, and "power" employed in the Third Schedule in the following manner:

> Throughout there is a distinction in wording between "jurisdiction" and "power" and turning to the Second Schedule and the Third Schedule the same vital distinction of wording is to be observed. The Second Schedule is headed "Original Civil Jurisdiction of the High Court" and every item in it, including item 12 with which we are here concerned, commences with the word "Jurisdiction." Item 1 is "Jurisdiction and authority" of a like nature and extent as are exercised by the Chancery and King's Bench Divisions of the High Court of Justice in England. Item 2 is "Jurisdiction" under any written law relating to matrimonial causes. And so forth.
>
> The Third Schedule, on the other hand, is headed "Additional powers of the Courts" and except in ltems 22 and 26, which only relate to Subordinate Courts, and item 25, which only relates to the appellate jurisdiction of the High Court, the word "jurisdiction" does not occur anywhere in it. Each item, on the other hand, apart from those mentioned, begins with the words "A Court may."
>
> It is axiomatic that when different words are used in a statute they refer to different things and this is particularly so where different words are, as here, used repeatedly. This leads to the view that in the Ordinance there is a distinction between the jurisdiction of a Court and its powers, and this suggests that the word "jurisdiction" is used to denote the types of subject matter which the Court may deal with and in relation to which it may exercise its powers. It cannot exercise its powers in matters over which, by reason of their nature or by reason of extra-territoriality, it has no jurisdiction. On the other hand, in dealing with matters over which it has jurisdiction, it cannot exceed its powers.

In *Damodaran v. Vesudevan* [1975] 2 MLJ 231, a strong panel of the Federal Court (Suffian LP, Lee Hun Hoe CJ (B) and Wan Suleiman FJ) upheld the order of *lis pendens* issued by the High Court under s. 25(2) and para. 6 of the First Schedule to the 1964 Act. At p. 232, Suffian LP expressed the following opinion on the interpretation of s. 25(2):

> In my judgment, sub-s. (2) of s. 25 of our Courts of Judicature Act is quite clear. It does not say that our High Court may provide for the interim protection of property the subject of litigation by the registration of a *lis pendens*, if and only if written law or rules of Court so provide, as is contended by Mr. Mooney. It says quite plainly that the High Court shall have power to provide for the interim protection of such property by the registration of a *lis pendens. The proviso in my judgment means only this: that if there are written laws or rules of Court relating to the same, then this power must be exercised in accordance with them. The proviso does not mean that if there are no written laws or rules of Court relating to the same, then the power cannot be exercised at all.*

> *To agree with Mr. Mooney would be to nullify the clear language of sub-s. (2) of s. 25.* (Emphasis supplied)

Although, the Federal Court decision was reversed by the Privy Council (see *T. Damodaran v. Choe Kuan Him* [1979] 2 MLJ 267), it was not on the ground that the High Court had no power under item 6 of the Schedule to issue *lis pendens* but it was on the ground that the discretionary power ought not to be exercised as the order would serve no useful purpose at all in the circumstances of the case. The Privy Council was of the view that as the Land Code provided for entry of caveat, the entry on the register of an order of *lis pendens* was a mere *brutum fulmen,* and ought not to be followed. The Privy Council judgment was completely silent and did not interfere with the meaning of s. 25(2) as lucidly interpreted by Suffian LP. We are persuaded after hearing argument that the said interpretation is correct and with respect ought to be followed on the additional reason that we will presently advance.

The literal and liberal interpretation given to the Schedule to the 1964 Act read with s. 25(2) as an additional power-conferring scheme by Parliament for the superior Courts has been repeatedly adopted and followed by majority opinion of the Federal Court in *Zainal Abidin bin Haji Abdul Rahman v. Century Hotel Sdn. Bhd.* [1982] 1 MLJ 260 and *Aspatra Sdn. Bhd. & 21 Ors. v. Bank Bumiputra Malaysia Bhd. & Anor.* [1987] 2 CLJ 377 and more recently in *Rama Chandran R. v. The Industrial Court of Malaysia & Anor.* [1997] 1 CLJ 147. From these authorities it is clear that the better view is not to interpret s. 25(2) in a narrow and pedantic way. As Mr. Narayanan for the respondent seems to suggest, we agree that once powers are conferred to the Courts by the Legislature, Judges should not shy away from these powers by putting up all sorts of barricades along their path. We pose the question of what meaning is to be attached to the proviso to s. 25(2) when the enacting part, i.e. the former or first part, is plain and unambiguous?

In our opinion the answer to the question should be determined by the principle laid down by Lord Wright in *Jennings & Anor. v. Kelly* [1940] AC 206 at 229:

> ... No doubt there may be cases in which the first part is so clear and unambiguous as not to admit in regard to the matters which are there clear any reference to any other part of the section; the proviso may simply be an exception out of what is clearly defined in the first part, or it may be some qualification not inconsistent with what is expressed in the first part ... .

Adopting the above principle, we are of the view that in the absence of any ambiguity in the first part, a proviso should not be interpreted in such a way as to totally negative the enacting or first part. Where as in s. 25(2) the enacting part is very clear, the proviso must be interpreted only as an exception

or qualification to the first part, and therefore it is not correct to treat the proviso to s. 25(2) as imposing a condition precedent on the first part. The additional powers conferred by the Schedule should not therefore be interpreted as restricted by a condition precedent merely because they are to be exercised "in accordance with any written law or rules of Court relating thereto." The unambiguous conferment of the power by the enacting part is clearly a different matter from the mode by which such power is to be exercised as contained in the proviso.

The relevant enacting part of s. 25(2) clearly and plainly provides that "the High Court shall have the additional powers set out in the Schedule." We cannot imagine how such plain expression of legislative words can ever be doubted as a legislative intention to confer such powers outright. It is therefore difficult to accept that the proviso to that section is intended to provide not merely as an exception to the enacting part but to cripple it completely by imposing a blanket qualification that the Court must look for another power-conferring statute, merely because the proviso requires such powers to be exercised "in accordance with" any written law or rules of Court relating thereto.

It is important to observe that the proviso does not say the statutory powers are "subject to" any written law which if it is the case may perhaps attract a condition precedent to the exercise of such powers and therefore entitling this Court to conclude that the whole Schedule to the 1964 Act is merely declaratory in nature. Under the canon of statutory interpretation, it is not open to any Court to substitute the phrase "subject to" for the words "in accordance with." In our view, the phrase "in accordance with" in the proviso simply refer to the mode of exercising the power and nothing more should be read into those words. Further, it is important to construe literally the word "any" immediately preceding "written law or rules of Court". In our opinion, what is plainly intended by Parliament is merely that the mode of exercising the powers must be in accordance with any existing written law or rules of Court and not in accordance with any written law or rules to be enacted in the future. If it were the legislative intent to prohibit the exercise of the power in the absence of another statute, it would have said so in the enacting part by direct qualification, and not by way of a proviso, because the proviso should not be interpreted as a qualification which is inconsistent with what is plainly expressed in the enacting part by rendering that part practically lame and useless.

Thus the mode of exercising the power to abridge under para. 8 must be in accordance with and not contrary to existing written law or rules of Court if any. That is the only qualification or exception imposed by the proviso. In the absence of any written law or rules of Court relating to shortening of time, it does not mean that in appropriate cases the additional power cannot be exercised at all. Apart from the 1964 Act itself, it is difficult to imagine if ever the legislature would find it necessary to enact separately another statute or rules relating to the abridgement or extension of time under s. 15(5), apart from the existing provisions as to time in the Interpretation and General Clauses Ordinance 1948 and the Interpretation Act 1967.

Mr. Robert Lazar also contends that the substitution of the word "jurisdiction" in the repealed Courts Ordinance 1948 with "power" in the corresponding provisions of the 1964 Act had nothing to do with the 1959 judgment of the Court of Appeal in *Lee Lee Cheng*. According to him the substitution was necessitated by the change in the judicial hierarchy brought about by the 1957 Federal Constitution. We are however unable to follow this reasoning. In our view it is most unlikely that the deliberate substitution of the word "jurisdiction" with the word "power" throughout s. 25 and the Schedule to the 1964 Act was not necessitated or influenced by the judgment in *Lee Lee Cheng* having regard to the sequence of events. The Court of Appeal decision which contains a lucid exposition of the legal distinction between jurisdiction and power, was pronounced about three years after Merdeka. Before that decision, it is reasonable to assume that most lawyers and members of the legal fraternity must have thought that the word "jurisdiction" in s. 47 and the Second Schedule to the 1948 Ordinance was wide enough to confer power. Clearly it was because of the 1959 judicial pronouncement of Thomson CJ that the word "jurisdiction" was deliberately substituted by Parliament with "power" when the 1964 Act replaced the 1948 Ordinance. If the Federal Constitution was the reason for the change, then one would have expected Parliament to make the necessary amendments to the 1948 Ordinance either before or on Merdeka Day itself so as to comply with the constitutional requirement pertaining to the judiciary. As stated by Lord Blackburn in *H. Young & Co. v. The Mayor and Corporation of Royal Leamington SPA* [1883] 8 App. Cases 517 at p. 526:

> We ought in general, in construing an Act of Parliament to assume that the legislature knows the existing state of the law.

Thus, when Parliament enacted the 1964 Act, the legislators must be assumed to know the important distinction between the words "jurisdiction" and "power" as propounded by Thomson CJ in *Lee Lee Cheng* in 1959 and reported in the 1960 MLJ. Instead of continuing with the use of the word "jurisdiction"

as in the past, Parliament elected to employ the word "power" repeatedly in the 1964 Act throughout s. 25 and the Schedule. In our view, it is obvious that by such deliberate substitution of legislative word, Parliament intended that the High Court should be conferred with outright additional general powers to be exercised judicially whenever circumstances demand, in accordance with any existing written law or rules of Court, relating thereto.

In the circumstances, we disagree with Mr. Robert Lazar's argument that para. 8 of the Schedule to the 1964 Act is not a power-conferring but a mere declaratory provision. The general power to abridge a prescribed time must of course be exercised judicially, depending on the facts of each particular case. It also goes without saying that the general provision under para. 8 cannot be invoked to defeat or supersede a mandatory requirement of any written law as to time.

The next important criticism by Mr. Robert Lazar against the judgment of the learned Judge is in respect of His Lordship's conclusion that s. 15(5) of the Legal Profession Act 1976 (hereafter referred to as "the 1976 Act") is not a mandatory provision in so far as the prescribed period of three months posting is concerned, and as such the said period could be abridged by the Court under the general power conferred by para. 8 of the Schedule to the 1964 Act. Learned Counsel for the appellants emphasised the fact that unlike related provisions in ss. 15(3) and 16(1) of the 1976 Act which carry the words "or such shorter period as the Court may allow", s. 15(5) is glaringly without those words and therefore silent on the power of the Court to abridge the prescribed time. The question therefore arises whether in the circumstances, the learned Judge ought not to have exercised his general power of abridgement under the Schedule. In our view, the answer depends on whether the prescribed time of three months continuous posting of the notices under s. 15(5) can be construed as mandatory or discretionary. If it is not mandatory, then (subject to the merit of the application which is not disputed here), the High Court is entitled to invoke its general discretionary power of abridgement under para. 8.

The relevant sections of the Legal Profession Act for the purpose of the particular issue in this appeal provide:

Section 15(3):

Every petitioner shall, not less than fourteen days before his petition is to be heard **or such shorter period as the Court may allow**, file an affidavit ... etc. ... etc. ... (Emphasis supplied)

Section 15(5):

The petitioner shall file his petition at the Registrar's Office at the Central Registry accompanied by notices intimating that he has so petitioned; such notices shall be posted and continue to be posted at all the High Courts for three months before the petitioner is admitted and enrolled as an advocate and solicitor.

Section 16(1):

A copy each of the petition and the affidavit required to be filed under s. 15 together with the true copies of each document exhibited pursuant to that section shall, within seven days of the filing thereof in the Registrar's Office, and not less than ten days **or such shorter period as the Court may allow** before the date fixed for hearing the petition, be served on the Attorney General, the Bar Council and the State Bar Committee of the State in which the pupil has served any part of his period of pupillage. (Emphasis supplied).

Section 17(1):

Any person may enter a caveat against the admission of any petitioner and upon such caveat being entered no application for the admission of the petitioner shall be heard unless a notice of hearing of not less than three clear days has been served on the person entering the caveat.

Mr. Robert Lazar has referred to us the case of *Majlis Peguam Malaysia & Ors. v. Au Kong Weng Joseph* [1993] 2 CLJ 417 where this Court had upheld the decision of the High Court in applying the strict rule of interpretation in construing the time limit imposed by ss. 98 and 99 of the 1976 Act as mandatory, and in concluding that non-compliance with the prescribed time rendered a disciplinary proceeding under the Act including the appointment of the disciplinary committee, illegal, void and of no effect. By the same token, Counsel urged upon us to be consistent with our strict approach over any time prescribed by any written law in the absence of any express power to abridge or extend. Although the facts of that case is certainly different from the present appeal, we generally agree with the opinion of Grove J in *Barker v. Palmer* [1881] 18 QBD 9, that the provisions with respect to time are always obligatory, i.e. mandatory unless a power of extending time is given to the Court.

On the strict rule of interpretation, it is very clear and plain, especially by comparing s. 15(5) with the preceding s. 15(3) and the subsequent s. 16(1) that the Legislature has deliberately left out the words "or such shorter period as the Court may allow" from s. 15(5), indicating an obvious fact that the Legislature intended the three months period to be mandatory. Even if the purposive approach of interpretation is applied, s. 17 compels us to the

conclusion that the prescribed three months period is mandatory, as any shortening of time would affect the right of third parties, *viz.* members of the general public, from exercising their right to enter caveats against the petitioner's admission to the Malaysian Bar. Indeed, when dealing with the necessity of posting, the learned Judge correctly acknowledged the involvement of the right of third parties in his ground of judgment by saying at p. 11:

> The posting must be done. This is because notice of the petition must be given to the general public in view of the provision of s. 17 of the Act. Under this section any person may enter a caveat against the admission of any petitioner. But the posting is not meant to bring the petition to the notice of the Bar Council, the Attorney General or the State Bar Committee because there is the requirement under s. 16 that they be served with a copy of the petition and under the section they have the right to object to the petition. ...

We therefore agree with the submission of Mr. Robert Lazar that under the provisions of ss. 15(3) and 16(1), the doing, of the act required by those sections does not unlike s. 15(5) affect the right of third parties and as such the Legislature expressly provides the power of abridgement. The omission of such power from s. 15(5) clearly implies that the three months period is a mandatory requirement, not only because anyone reading the notice would not know the date of hearing of the petition and the time period by which he has to lodge a caveat, but also because the notice is addressed to the world at large and as such it is important that the prescribed time period of three months which by any standard is not excessive for the purpose of notification to the general public, should not be shortened. Perhaps the only exception if it can be called an exception, is where it could be shown that the requisite notice had in fact been complied with in a previous petition for admission which had lapsed through no fault of the petitioner. (See *Re Chng Kiat Leng* [1963] 29 MLJ 25).

In the circumstances, we do not consider that the express power of abridgement in ss. 15(3) and 16(1) is superfluous as suggested by the learned Judge in the Court below. In interpreting any statutory provision, no words used by Parliament should be construed as superfluous and of no effect whatsoever simply to enable the Courts to rewrite the Legislative plain language. In our view, the doctrine of absurdity and redundancy in legislative words must be applied with the utmost caution, and it must not be applied when an explanation can in fact be found for such words. Indeed, in interpreting statutes, the Courts must in appropriate cases, even take heed of punctuations - see *Hanlon v. The Law Society* [1981] AC 124 at p. 197-8; and *Dato' Mohd. Hashim Shamsuddin v. The Attorney-General Hong Kong* [1986] 2 MLJ 112 FC. We therefore hold that merely because para. 8 of the Schedule to the 1964 Act has conferred a general power of abridgement, it does not follow that

Parliament is precluded from conferring express power of abridgement in any particular legislative provision. Similarly, it does not mean that Parliament cannot prohibit such general power from being invoked either expressly or by necessary implication. In this case, we are more than satisfied that the prescribed time in s. 15(5) is intended to be mandatory and as such the Court ought not to exercise its general power under para. 8 of the 1964 Act to abridge the period of posting. The general powers in the Schedule are discretionary, and like any other discretions, they must be exercised in a way which in all the circumstances best reflect the requirement of justice which for the purpose of ss. 15(5) and 17 requires the Court to take into account not only the interest of the petitioner and the Bar Council and Committee but also the interest of the general public for whose benefit the provision of s. 17 has been specially enacted.

The argument that the provision of s. 4 of the 1964 Act cited earlier in this judgment, would confer superiority to para. 8 over the provisions of ss. 15(3), 15(5) and 16(1), even if valid, cannot be applicable, since such superiority can only apply to a written law "in force at the commencement" of the 1964 Act, and the Legal Profession Act 1976 is not one of such written law. In any event, in the context of the general power of abridgement, even if there is inconsistency or conflict between the 1964 Act and the 1976 Act, where the prescribed time in the 1976 Act is mandatory either expressly or by necessary implication, the Court would not be acting judicially to invoke such general power to defeat the mandatory provision.

The rule is that a prescibed time in any written law is always presumed and construed as mandatory unless there is express power in that particular law to abridge or extend. The general provision in para. 8 of the Schedule is a power-conferring provision which has no precondition except that it must be exercised in accordance with any existing written law or rules of Court relating thereto. Apart from the interpretation Legislation and the 1976 Act itself, there is no other legislation or rules of Court relating to the subject matter under discussion. As such the general power under para. 8 must be exercised in accordance with and not contrary to the mandatory provision of s. 15(5). In addition, even if the general discretionary power in para. 8 to abridge or extend were applicable, it must be exercised judicially, not arbitrarily or capriciously, and it ought not to be exercised unless the requirement of justice is satisfied. Thus, even assuming for one moment that the provision of s. 15(5) had nothing to do with third party rights, and could be construed as not obligatory, the Court must exercise the discretion in accordance with correct principle. We accordingly rule that the learned trial Judge erred in law in holding that the High Court had power to abridge the time period of three months prescribed

by s. 15(5) of the Legal Profession Act 1976, by virtue of the powers conferred by para. 8 of the Schedule to s. 25(2) of the Courts of Judicature Act 1964.

The appeal is therefore allowed with costs both here and below. The order of the High Court is set aside and the deposit is refunded to the appellants.

Edgar Joseph Jr:

I have had the advantage of reading the judgment in draft of my brother Mohd. Azmi FCJ and respectfully agree with him that this appeal should be allowed but as the question of law arising for decision is of general importance, I should like to express my views in words of my own.

The sole question of law for decision in this appeal is: whether the High Court is conferred with power, by virtue of the provisions of para. 8 of the Schedule to the Courts of Judicature Act 1964, ('the Schedule') to abridge the period of three months during which the notices preceding the petition for admission to the roll as an advocate and solicitor shall continue to be posted at all the High Courts as required by s. 15(5) of the Legal Profession Act 1976, ('the Act')?

To put matters in perspective, it would be convenient to set out the following statutory provisions:

Section 25(1) & (2) of the Courts of Judicature Act 1964:

Section 25(1) Without prejudice to the generality of Art. 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.

(2) Without prejudice to the generality of sub-s. (1) the High Court shall have the additional powers set out in the Schedule:

Provided that all such powers shall be exercised in accordance with any written law or rules of Court relating to the same.

Para 8. of the Schedule:

Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed:

Provided that this provision shall be without prejudice to any written law relating to limitation.

Section 15 of the Legal Profession Act 1976:

(1) This section shall apply to every person who proposes to apply to be admitted and enrolled as an advocate and solicitor.

(2) An application for admission under this section shall be by a petition to the Court and verified by affidavit.

(3) Every petitioner shall, not less than fourteen days before his petition is to be heard **or such shorter period as the Court may allow**, file an affidavit exhibiting -

(a) where applicable, true copies of any documentary evidence showing that he is a qualified person;

(b) two recent certificates as to his good character;

(c) a certificate of diligence from his master with whom he served his pupillage in cases where he is required to serve a period of pupillage, or in the absence of such certificate any other evidence as the Court may require showing that he has served such pupillage with diligence;

(d) where applicable, a certificate signed by the Secretary of the Board that the petitioner has attended the courses of instruction and passed the examinations, if any, required in his case under this Act;

(e) where applicable, a certificate from his principal that he has satisfactorily served the appropriate period as an articled clerk;

(f) true copies of any documentary evidence showing that he is either a Federal citizen or a permanent resident of Malaysia; and

(g) true copies of any documentary evidence that he has passed or is exempted from the Bahasa Malaysia Qualifying Examination.

(4) The petition, notice, affidavit and certificates referred to in this section shall be in the forms prescribed by the Board.

(5) The petitioner shall file his petition at the Registrar's Office at the Central Registry accompanied by notices intimating that he has so petitioned; such notices shall be posted and continue to be posted at all the High Courts for three months before the petitioner is admitted and enrolled as an advocate and solicitor. (Emphasis supplied)

Section 16(1) of the Legal Profession Act 1976:

A copy each of the petition and the affidavit required to be filed under s. 15 together with the true copies of each document exhibited pursuant to that section shall, within seven days of the filing thereof in the Registrar's Office, and not less than ten days **or such shorter period as the Court may allow**

a before the date fixed for hearing the petition, be served on the Attorney-General, the Bar Council and the State Bar Committee of the State in which the pupil has served any part of his period of pupillage. (Emphasis supplied)

Section 17 of the Legal Profession Act 1976:

b (1) Any person may enter a caveat against the admission of any petitioner and upon such caveat being entered no application for the admission of the petitioner shall be heard unless a notice of hearing of not less than three clear days has been served on the person entering the caveat.

c (2) Every caveat under this section shall be entered in the Registrar's Office and shall contain the full name, occupation and address of the caveator, a brief statement of the grounds of his objection and an address for service.

First of all, it is important to consider whether the period of posting set forth in s. 15(5) of the Act is mandatory and therefore obligatory or merely directory and therefore discretionary.

d In *Majlis Peguam Malaysia v. Au Kong Weng Joseph* [1993] 2 MLJ 57, the Supreme Court had to decide whether the time limits imposed by ss. 98 and 99 of the Act with regard to the various steps to be taken in considering a complaint against an advocate and solicitor are mandatory, and if so, whether proceedings under the Act against him, including the appointment of the e disciplinary committee, in breach of these time limits were incurably illegal, void and of no effect. The Supreme Court answered these questions – quite correctly, if I may say so – in favour of the advocate and solicitor concerned for reasons which appear sufficiently in its judgment.

f In the present case, the learned Judge in the High Court had rightly held that the requirement in s. 15(5) of the Act for the **posting** of notice is mandatory. His reasoning for this view was clear, concise and cogent. This is how he put it:

g In my view under sub-s. 15(5) the provision for the posting of notice is a mandatory provision. The posting must be done. This is because notice of the petition must be given to the general public in view of the provision of s. 17 of the Act. Under this section any person may enter a caveat against the admission of any petitioner.

h But then, turning to the requirement in s. 15(5) as to the **period** of three months during which the notices intimating that a petitioner has petitioned for admission and enrolment as an advocate and solicitor, shall continue to be posted, he added this:

i

> But the posting is not meant to bring the petition to the notice of the Bar Council, the Attorney-General or the State Bar Committee because there is the requirement under s. 16 that they be served with a copy of the petition and under the section they have the right to object to the petition.

He then concluded:

> In the scheme of things, is it really very important that the notice of the petition to the general public must be for the prescribed period of three months? I do not think so. There may be circumstances which the Court can accept as sufficient to justify the shortening of the period. In my view the provision as to the time frame in sub-s. 15(5) is not mandatory.

The task of the Court is to bear steadily in mind that it is the real intention of the Legislature that must be ascertained.

There is, however, no rule of thumb to ascertain legislative intention. "I believe", said Lord Penzance in *Howard v. Bodington* [1877] 2 PD 203 (at p. 211), "as far as any rule is concerned you cannot safely go further than that in each case you must look to the subject matter; consider the importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

It is also worth recalling what Mr. Francis Bennion says in his book on *Statutory Interpretation* (2nd Edn.) at p. 32:

> Where legislation confers some right or benefit on a person which he would not have at common law, the conditions laid down as to the accrual of the right or benefit, unless purely formal, are mandatory. If they are not complied with the right or benefit will not accrue.

So one starts with the *prima facie* presumption that subject to the context in which the words appear, the use of the word "shall", in s. 15(5) is taken *prima facie* to import some sort of obligation in contradiction to the word "may".

The next point to note is that under the Act no power is given to the Court to abridge the period of posting in s. 15(5) and this is emphasised by the contrast s. 15(5) displays when it is compared with s. 15(3) and s. 16(1) wherein time is mentioned and the words **"or such shorter period as the Court may allow"** occur. I consider that in a situation such as this the presumption that a deliberate change of wording denotes a change in meaning, can properly be invoked. (See, *Ricket v. Metropolitan Railway* [1867] LR 2 HL 175, per Lord Westbury at p. 207.)

Turning to the purpose of s. 15(5) of the Act, this must be to give notice to the world at large that a particular individual has petitioned to the Court to be admitted and enrolled as an advocate and solicitor, so as to enable any member of the public who wishes to object to enter a caveat under s. 17 of the Act. As Thomson CJ said in *Re Chng Kiat Leng* [1963] MLJ 25:

> In relation to notice the question is, has sufficient public notice been given as to this applicant's intention to apply for admission to enable anybody who knows anything against his character and suitability to come forward and speak?

Why should the period of posting of the required notice be for three months? The corresponding period in Singapore is twice as long. (See, s. 16(3) Legal Profession Act (Cap. 161 1985 Rev. Ed.) The answer is Parliament chose that period because it considered this a reasonable period and it is not for the Court to query legislation but merely to give effect to the will of Parliament as expressed in the Law.

Then again, if the period for posting were treated as directory only, and were shortened, what are the consequences which could follow? This is an area where consequential construction should be applied. Two cases may be cited to illustrate this modern approach. In *R v. Committee of Lloyd's, ex parte Moran* [1983] The Times, 24 June, Mustill J (as he then was) said that "statute or contract cannot be interpreted according to its literal meaning without testing that meaning against the practical outcome of giving effect to it." So also in *ICI Ltd. v. Shatwell* [1965] AC 656 at 675 Lord Radcliffe said: "it sometimes helps to assess the merits of a particular decision if one starts by noticing its results and only after doing that allots to it the legal principles upon which it is said to depend." Lord Radcliffe added that in the case before him he had started by considering the consequences of the apparent meaning of the enactment and found these disquieting and proceeded to say: "I start then with the assumption that something must have gone wrong in the application of legal principles that produce such a result."

In considering this part of the case, it must be recognised that the notice that a petitioner has petitioned does not specify the date of hearing of the petition and so a member of the public wishing to oppose the petition by entry of a caveat under s. 17 (which shall contain a brief statement of the grounds of objection) could be disadvantaged if the period of three months prescribed for the posting of notices were capable of abridgement. If, therefore, an order for abridgement can be, and is made, the intention of the Legislature in enacting s. 15(5) could be frustrated.

In my view, therefore, it is impossible to escape the conclusion that the provision as to time set forth in s. 15(5) of the Act is, mandatory and therefore obligatory.

The next question to be logically considered is: whether notwithstanding the provision as to time set forth in s. 15(5) of the Act being mandatory, power is nevertheless given to the High Court by para. 8 of the Schedule to abridge the time limited by s. 15(5)? This, of course, depends upon the proper construction of para. 8 of the Schedule read with s. 25(2) of the Courts of Judicature Act 1964, not forgetting the proviso thereto.

It should be recognised that para. 8 of the Schedule is a **general measure** and speaks about **powers** of the High Court to enlarge or abridge time prescribed by any written law for the doing of any act or taking any proceeding **whereas** s. 15(5) is **specific measure** with no power given to the Court to enlarge or abridge time, and which, in my view, for the reasons stated, is mandatory and therefore obligatory. There is thus an apparent conflict between these two measures, and in such a situation it is a well known rule of construction that the specific measure overrides the general measure. (See, e.g. *Lee Lian & Ors. v. PP* [1956] 22 MLJ 191 at p. 193 per Thomson J).

Having made this preliminary observation regarding this part of the case, I must go further to consider the proper construction of para. 8 of the Schedule read with s. 25(2) of the Courts of Judicature Act 1964, not forgetting the proviso thereto.

I respectfully agree with Thomson CJ when in *Lee Lee Cheng v. Seow Peng Kwang* [1960] 26 MLJ 1 CA, he drew a vital distinction between the word "jurisdiction" appearing in the Second Schedule to the Courts Ordinance 1948, and the word "power".

I also respectfully agree with Suffian LP in *Damodaran v. Vesudevan* [1975] 2 MLJ 231 when he said with regard to the proviso to s. 25(2) of the Courts of Judicature Act 1964:

> In my judgment, sub-s. (2) of s. 25 of our Courts of Judicature Act is quite clear. It does not say that our High Court may provide for the interim protection of property the subject of litigation by the registration of a lis pendens, if and only if written law or rules of Court so provide, as is contended by Mr. Mooney. It says quite plainly that the High Court shall have power to provide for the interim protection of such property by the registration of a *lis pendens. The proviso in my judgment means only this; that if there are written laws or rules of Court relating to the same, then this power must be exercised in accordance with them. The proviso does not mean that if there are no*

written laws or rules of Court relating to the same, then the power cannot be exercised at all.

To agree with Mr. Mooney would be to nullify the clear language of sub-s. (2) of s. 25. (Italics supplied)

In *R. Rama Chandran v. Industrial Court of Malaysia & Anor.* [1997] 1 CLJ 147 at pp. 211 *h* to 212 *a* in considering the effect of s. 25(2) of the Courts of Judicature Act 1964, read with the proviso thereto, in relation to the powers of the High Court in the field of public law remedies under para. 1 of the Schedule, I had, when speaking for the majority of the Federal Court, said this:

In my view, this was the purpose of the proviso to s. 25(2); it is intended simply to make clear the meaning of what has gone before in the enacting clause.

Most importantly, it is obvious that the provisions of the proviso to s. 25(2) do not affect **powers** of the Court referred to in para. 1 of the Schedule to the Courts of Judicature Act 1964, ('the Schedule'); they merely control their **exercise** by stipulating that they shall be exercised in accordance with any written law or rules of Court relating to the same. These requirements, in my view, would be silently implied in s. 25(2) even without the proviso.

Next, in my view, the words "in accordance with any written law", are the equivalent of "not repugnant to", "not in conflict with" or "not inconsistent with" statute law. It follows that recourse may be had to para. 1 of the Schedule to derive jurisdiction to grant the reliefs specified therein unless there is explicit statutory prohibition ...

Similarly, turning to the words "in accordance with ... rules of Court relating to the same", all these words mean is that the **procedure** to move an application for the prerogative orders shall be in accordance with the requirements of O. 53 ...

If I may say so, it appears to me, that the passages in the judgment of Suffian LP in *Damodaran*, quoted above, strongly support what I had said in Rama Chandran with regard to the effect of the proviso to s. 25(2) of the Courts of Judicature Act 1964.

It follows, therefore, that the words of s. 25(2) of the Courts of Judicature Act 1964, "... the High Court **shall have the additional powers** set out in the Schedule" (Emphasis supplied) are not merely declaratory of the powers of the High Court but are power-conferring words.

Accordingly, I have no qualms whatever in holding that that part of the judgment of Eusoffe Abdoolcader J (as he then was) in *Pahang South Union Omnibus Co. Bhd. v. Minister of Labour & Manpower & Anor.* [1981] 2 MLJ 199, where he considers the effect of s. 25(2) of the Courts of Judicature Act 1964, in the context of the powers of the High Court in the field of public law remedies provided in para. 1 of the Schedule, was given *per incuriam,* since he had treated the word "power" occurring in s. 25(2) and in para. 1 of the Schedule, as though it means no more than "jurisdiction" thus, in effect, rewriting the relevant statutory provisions. In so doing, he ignored the vital distinction between "jurisdiction" and "power" to which Thomson CJ drew attention in *Lee Lee Cheng (supra)* and also overlooked the passage in the judgment of Suffian LP in *Damodaran (supra)* reproduced above, on the effect of the proviso to s. 25(2).

Having said that, I have to point out that in the present case, there is a written law, to wit, s. 15(5) of the Act, wherein the provision as to time is **obligatory,** which thus **prohibits** the High Court from abridging the time limited therein, by resort to its general powers under para. 8 of the Schedule or otherwise. In other words, any attempt to abridge the time limited under s. 15(5) of the Act, by resort to para. 8 of the Schedule, would be in direct contradiction of the provisions of the proviso to s. 25(2) of the Courts of Judicature Act 1964, and therefore **not in accordance** with written law.

With profound respect, therefore, in the present case, I regret that I am unable to agree with the learned Judge in the High Court, that it was open to him to exercise his powers under para. 8 of the Schedule to abridge the time limited under s. 15(5) of the Act.

Before departing from the present case, there are two matters upon which I should like to make some observations regarding the general powers of the High Court under para. 8 of the Schedule.

Having held that the provision as to time in s. 15(5) of the Act is mandatory and therefore obligatory since there is no provision therein giving power to the High Court to abridge such time, and that resort to the general power to abridge such time under para. 8 of the Schedule would be in direct contradiction of the provisions of the proviso to s. 25(2) of the Courts of Judicature Act 1964, the question then arises: in what circumstances, would resort to para. 8 of the Schedule be justified?

It is true that on general principle, where a statute regulates the exercise of a right or power, or the use of a prescribed procedure, express reference to time being made, there is a marked inclination on the part of the Court to regard the relevant provision as obligatory unless a power of extending or abridging

the time is given to the Court. But, in rare cases, a provision as to time in a statute may be directory only even though no such power is given to the Court. So, for example, in *R v. Leicester JJ* [1827] 7 B. & C. 6, 12, the Quarter Sessions Act 1814, provided that the Michaelmas quarter sessions should be held in the week next after 11 October but it was held that this provision was merely directory as to the time for holding the session.

Exceptionally, therefore, where a provision as to time in a particular statute is, having regard to its context, merely **directory,** but no power to extend or abridge time is given thereunder to the Court, then I can think of no reason why, in appropriate circumstances, the Court should not exercise its general powers under para. 8 of the Schedule.

The next point to which I should like to direct attention is the proviso to para 8 of the Schedule which reads: "Provided that this provision shall be without prejudice to any written law relating to limitation." In my view, this proviso is statutory recognition of the principle laid down by the Judicial Committee of the Privy Council more than 60 years ago in *Maqbul Ahmad v. Onkar Prata Narain Singh AIR* [1935] PC 85, that there is no general judicial discretion, outside the Limitation Act, enabling the Court to relieve a suitor from the provisions of the Limitation Act on the ground of hardship and the Court cannot override the provisions of the Limitation Act on equitable considerations. (See also, *Nathan s/o Arumugam v. Chin Jin Tze* [1982] 2 CLJ 555).

In the result, I would respectfully concur with the orders proposed by Mohd Azmi FCJ in the final paragraph of his judgment.

Reported by Gan Peng Chiang